



STATE OF INDIANA

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November 7, 2011

Shaw R. Friedman
705 Lincolnway
LaPorte, Indiana 46350
Via email: sfriedman.associates@frontier.com

Re: *Informal Inquiry 11-INF-65; LaPorte County Public Library*

Dear Mr. Friedman:

This is in response to your informal inquiry regarding the LaPorte County Public Library Board of Trustees ("Library"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* Mark Phillips, Attorney, responded on behalf of the Library. His response is enclosed for your review.

BACKGROUND

You represent several current and former employees of the Library who were either terminated or demoted on October 28, 2011 following a public meeting held by the Library on October 27, 2011. At the meeting, the Library unanimously approved the appointment of Interim Director Fonda Owens as Permanent Director and then approved an Organizational Study ("Study") which eliminated 25% of the Library's current workforce, consolidated various library departments, and closed the Hanna branch. You further allege that a copy of the Study was presented to the Board of Trustees in executive session, but not produced at the public meeting.

You provide that none of the changes had previously been discussed or approved at a public meeting of the Library. The changes were further only approved after nominal discussion at the October 27, 2011 meeting. You believe that the changes constitute "final action" pursuant to the ODL that were approved at one or more executive sessions held by the Board of Trustees dating back to July 2011. You allege that the subject matter discussed at the Board's executive sessions went far beyond the exceptions cited by it in the posted public notices.

In response to your informal inquiry, Mr. Phillips advised that proper public notice was given by the Library for the October 27, 2011 public meeting. The Library received a recommendation from its Executive Director at the October 27, 2011 public

meeting regarding the Study, which was considered by the Board members and approved by unanimous vote. Mr. Phillips advised that you were at the October 27, 2011 public meeting and were given two (2) opportunities to speak.

Beginning in July 2011, Ms. Owens, then serving as the Library's interim Executive Director, began conducting an organizational study in order to determine what actions were needed to bring expenditures into line with the Library's anticipated revenues. The recommendations made by Ms. Owens were presented to the Library at the October 27, 2011 public meeting. The only final action taken by the Library in regards to the Study took place at the October 27, 2011 public meeting.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). "Public business" means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Executive session" is defined as a meeting from which the public is excluded. *See* I.C. § 5-14-1.5-2(f). The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 71 (Ind. Ct. App. 2001). "Final action" means a vote by a governing body on a proposal, motion, resolution, rule, regulation, ordinance or order. *See* I.C. § 5-14-1.5-2(g).

Here, you provide that the changes adopted by the Library had, prior to the October 27, 2011 meeting, never been discussed or approved at a public meeting of the Library. In addition, only a nominal discussion took place at the October 27, 2011 meeting. "Final action" is defined by the ODL as a vote by a governing body on a proposal, motion, resolution, rule, regulation or order. *See* I.C. § 5-14-1.5-2(g). As long as the Library took "final action" (i.e. voted) on any recommendations made by the Study at a public meeting, and not in executive session, then it is my opinion that it did not violate the ODL. There is no requirement in the ODL that a governing body conduct a discussion of matters before it takes a vote, or that it permit public comment on those matters. *See Opinions of the Public Access Counselor 04-FC-15; 04-FC-16; 11-FC-212*. As Counselor Neal noted in Formal Complaint 08-FC-149, Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South*

Bend Cmty. Sch. Corp., 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; *see also* I.C. § 5-14-1.5-3 (“All meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.”). As such, it is my opinion that the Library did not violate the ODL by not conducting a more thorough discussion on the Study prior to its adoption at the October 27, 2011 public meeting.

Executive sessions may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

You allege that the Library held discussions on the Study at prior executive sessions, dating back to July 2011 that went well beyond the exceptions provided by the Library in the public notice for those sessions. The Library provided that Ms. Owens initiated the Study in July 2011, which culminated in her presentation of recommendation to the Board at the October 27, 2011 public meeting. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. If the Library discussed matters in executive session that went beyond those exceptions provided in the ODL or the public notice, then it acted contrary to the ODL. However, if the Library limited its discussion during executive session to the matters that are provided in the exception and public notice, then it is my opinion that it did not violate the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Mark L. Phillips